

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Gina Pacheco, et als
Plaintiffs

v.

Pedro Toledo, et als
Defendants

CIVIL CASE NO.: 10-1480 (ADC-SCC)

Motion to Clarify Statement in Docket 213

TO THE HONORABLE COURT:

COMES now defendant, Municipality of Carolina, through the undersigned attorney and very respectfully, **SET FORTH** and **PRAY**:

In the motion titled Omnibus surreply to Defendant's Motions Dockets 203, 205, 206, 207, 209 and 210, plaintiffs inform the Court that they first learned of several disciplinary proceedings from the summary contained as Exhibit 4 to the Motion for summary judgment. They assert that a personnel file was given to them and no documents related to the grievances appear in it. They further inform the Court that this file has a signature that certifies the file to be a complete and exact copy.

It is very troublesome that the Court must engage in a who-said-what and in credibility issues regarding discovery. Nonetheless, since it attains the undersigned responsibility as the person in charge of carrying out the discovery and presenting, under her own signature, a statement to the Court as to the actions taken during discovery, the undersigned is forced to clarify for the record as follows.

Plaintiffs seem to confuse two separate files. Under Puerto Rico law, the employee must have an employee file and, in this, only final sanctions in administrative proceedings may appear. 21 PR Laws Ann. § 4572 (d). No other information about administrative proceedings must appear there; so, a separate file is kept, which is usually referred to as the grievances file. These files —the employee's file and the grievances procedures file— were produced at different times to plaintiffs. The first one was produced early during discovery. Under Fed. Rule of Civ. P. 34 (a)(1)(A), the Municipality produced the grievance file to be inspected and photocopied by plaintiffs during the Police Commissioner's deposition. This file was taken to

another room and examined by plaintiffs' attorneys, who then marked only certain documents to be photocopied by us. These documents were photocopied and sent to them, as requested.

Exhibit 4 is a summary of the documents contained in the grievance file. If plaintiffs chose to only require some of the documents instead of the complete file, that choice cannot be used now to allege lack of discovery.

Respectfully submitted,

In San Juan, Puerto Rico this 3rd day of January, 2013.

RESPECTFULLY SUBMITTED,

PEDRO ORTIZ ÁLVAREZ, LLC

P.O. Box 9009

Ponce, Puerto Rico 00732

Tel (787) 841-7575 / (787) 758-9356

Fax (787) 841-0000 / (787) 758-9343

S/ Johanna M. Emmanuelli-Huertas

JOHANNA M. EMMANUELLI-HUERTAS

USDC-PR Number 210506

e-mail: jmeh@poalaw.com